

**CURLY-LEAF PONDWEED TREATMENT PROGRAM  
SERVICES AGREEMENT**

**THIS CURLY-LEAF PONDWEED TREATMENT PROGRAM SERVICES AGREEMENT** (“Agreement”) made and entered into by and between the Bassett Creek Watershed Management Commission, a Minnesota joint powers organization (the “Commission”), and PLM Lake and Land Management (the “Contractor”). The Commission and the Contractor may hereinafter be referred to individually as a “party” or collectively as the “parties.”

1. **SERVICES.** The Contractor will provide all labor, materials, supplies, and equipment needed to perform the Curly-leaf pondweed treatment services as set out in the attached Exhibit 1 in accordance with the terms and conditions of this Agreement (collectively, the “Services”).
2. **TIMING OF SERVICES.** The Contractor shall fully perform and complete delivery of the Services to the reasonable satisfaction of the Commission by June 1, 2017.
3. **PAYMENT FOR SERVICES.** The Contractor shall be paid based on the price in its quote, attached hereto as Exhibit 2, and in accordance with the provisions in Exhibit 1. The Contractor shall provide the Commission a detailed invoice for the completed Services in accordance with the requirements of Minnesota Statutes, section 471.38. The Commission shall pay the Contractor within 40 days of receipt of the invoice.
4. **INSURANCE.** The Contractor shall carry, during the entire term of this Agreement, insurance coverage in values indicated below and shall furnish a certificate of insurance to the Commission prior to commencing the Services. The Commission shall be named an additional insured on the Contractor’s Commercial General Liability policy.

| TYPE                         | MINIMUM LIMITS               |
|------------------------------|------------------------------|
| Commercial General Liability | \$1,000,000                  |
| Automobile Liability         | \$1,000,000                  |
| Workers Compensation         | State of MN Statutory Limits |
| Employer’s Liability         | \$500,000                    |

5. **INDEPENDENT CONTRACTOR.** The Contractor acknowledges and agrees that it is an independent contractor and that nothing herein shall be construed to create the relationship of employer and employee between the Commission and the Contractor. No employee related withholdings or deductions shall be made from payments due the Contractor. The Contractor shall not be entitled to receive any benefits from the Commission and shall not be eligible for workers’ compensation or unemployment benefits. The Contractor shall at all times be free to exercise initiative, judgment, and discretion in how best to perform or provide the Services identified herein.
6. **COMPLIANCE WITH LAWS.** The Contractor shall comply with all applicable federal, state and local laws, regulations or ordinances in performance of the Contractor’s duties hereunder, such laws including but not limited to those relating to non-discrimination in hiring or labor practices. The Contractor shall also be required to, at its own cost, obtain any permits, licenses, or

permissions that may be required to provide the Services, except that the Commission shall obtain, at its own cost, a permit from the MnDNR for the treatment. The Contractor shall adhere to the MnDNR permit issued for this project. Any violation of federal, state, or local laws, statutes, ordinances, rules or regulations, as well as loss of any applicable license, permit, or certification by the Contractor shall constitute a material breach of this Agreement, regardless of the reason and whether or not intentional, and shall entitle the Commission to terminate this Agreement effective as of the date of such violation, failure, or loss.

7. **TERM AND TERMINATION.** This Agreement shall be effective as of the date of the last party to execute it and it shall continue in effect until final payment by the Commission after satisfactory completion of the Services. The Commission may terminate this Agreement if the Contractor fails to make sufficient progress toward completion, or fails to complete, the Services in accordance with the timeline established herein. Either party may terminate this Agreement if the other party is in breach of any material term of this Agreement if the breaching party fails to complete the cure the breach within 20 days' written notice of breach provided by the non-breaching party.
8. **AMENDMENTS.** This document, together with the attached exhibits and quote (which are incorporated herein by reference), constitutes the entire Agreement between the parties and no modifications of its terms shall be valid unless reduced to writing and signed by both parties.
9. **DATA PRACTICES.** Any data created, collected, received, stored, used, maintained, or disseminated by the Contractor in performing the Services is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, ("Act") and the Contractor must comply with those requirements as if it were a government entity. The Contractor does not have a duty to provide access to public data to the public if the public data is available from the Commission. The Contractor shall immediately notify the Commission if it receives a request under the Act and shall work with the Commission to ensure the response complies with the Act.
10. **AUDIT.** The Contractor agrees that for a period of six years after completion of the Services the Commission, the State Auditor, and the Legislative Auditor, or any of their duly authorized representatives, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, and records that are relevant to and involve transactions relating to this Agreement.
11. **INDEMNIFICATION.** Any and all claims that arise or may arise against the Contractor, its agents, servants, or employees as a consequence of any act or omission on the part of the Contractor or its agents, servants, or employees while engaged in the performance of the Agreement shall in no way be the obligation or responsibility of the Commission. The Contractor shall indemnify, hold harmless, and defend the Commission, its officers, agents, and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney fees which the Commission, its officers, agents, or employees may hereafter sustain, incur, or be required to pay, arising out of or by reason of any act or omission of the Contractor, its agents, servants or employee, in the execution, performance, or failure to adequately perform the Contractor's obligations pursuant to this Agreement. Nothing in this

Agreement shall constitute a waiver by the Commission of any statutory limits or immunities from liability.

12. **APPLICABLE LAW.** The law of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under this Agreement will be in and under those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence, or incorporation of the Contractor.
13. **NO AGENCY.** The Contractor is an independent contractor and shall not be considered to be the agent or servant of the Commission for any purpose and shall have no authority to enter into any contracts, create any obligations, or make any warranties or representations on behalf of the Commission.
14. **NOTICES.** Any notice or demand, authorized or required under this Agreement shall be in writing and shall be sent by certified mail to the other party as follows:  
  
    To the Contractor:                    PLM Lake and Land Management  
  Patrick Selter, 1511 Maras Ave, Shakopee MN 55379  
  
    To the Commission:                 Chairperson  
  Bassett Creek Watershed Management Commission  
  Commission of Golden Valley Commission Hall  
  7800 Golden Valley Road  
  Golden Valley, MN 55427
15. **AUTHORITY.** Each of the undersigned parties warrants that it has the full authority to execute this Contract, and each individual signing this Contract on behalf of a corporation hereby warrants that he or she has full authority to sign on behalf of the corporation and that he or she represents and binds such corporation thereby.
16. **NO WAIVER.** The waiver by any party of a breach or violation of, or failure of any party to enforce, any provision of this Contract shall not operate or be construed as a waiver of any subsequent breach or violation or as a relinquishment of any rights hereunder.
17. **SERVERABILITY.** If any part of this Contract is invalid or unenforceable under applicable law, that part shall be ineffective only to the extent of such invalidity or unenforceability without in any way affecting the remaining parts of the provision or this Contract.

**IN WITNESS WHEREOF**, the parties have executed this Agreement effective as of the date of the last party to execute it.

**CONTRACTOR**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**BASSETT CREEK WATERSHED  
MANAGEMENT COMMISSION**

By: \_\_\_\_\_  
Chairperson

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Secretary

Date: \_\_\_\_\_

**EXHIBIT 1**  
General Service Requirements

**1. LOCATION & SCOPE OF SERVICES**

The purpose of the Services is to do follow up control of Curly-leaf pondweed regrowth. The location of the Services shall only be on Medicine Lake within the Cities of Plymouth and Medicine Lake, Minnesota. The Services shall include furnishing and applying herbicide, furnishing and installing signage throughout the project area during the spring of 2017. The work shall be done in accordance with Minnesota Department of Natural Resources (MnDNR) guidelines for herbicide application.

The report prepared by Blue Water Science for the Commission of Plymouth dated November 2016 is incorporated herein by reference, shall be provided to the Contractor, and shall serve as reference to the Contractor related to the provision of the Services.

**2. MATERIALS**

- A. Herbicide. The herbicide used will be Aquathol K (dipotassium salt of endothall) at a minimum concentration of 1.0 parts per million (ppm) in areas with a water depth of less than 6-feet and a maximum concentration of 1.5 parts per million (ppm) concentrations in areas of over 6-foot depth of water.
- B. Signage. The Contractor will place all necessary signage in the project area according to approved MnDNR standards.

**3. APPLICATION**

- A. MnDNR Guidelines. The Contractor shall follow all of MnDNR's guidelines for herbicide application and will install all necessary signage throughout the project area and public access areas.
- B. Treatment Times. The herbicide treatment, if feasible, will be conducted during mid-week (Tuesday-Thursday) to minimize impact on lake users. Once the herbicide application has begun, it must be completed within seven days. Treatment should be done between 4/1/2017 and 6/1/2017. No treatment should be done 5/27/16 to 5/31/16 for the Memorial Day holiday.

**4. TREATMENT AREA**

Specific locations for treatment will be determined by an early spring aquatic vegetation survey. Total treated areas will not exceed 45 acres on Medicine Lake. There will be no treatment of the lake closer than 150 feet off the shore.

## **5. WEATHER AND TEMPERATURE LIMITATIONS**

The treatment must happen when the lake water temperature is between 50 and 60 degrees Fahrenheit. The Contractor is responsible to take lake water temperature readings at approximately 2-3 feet depth, at least once every day starting April 1, 2017 and each day until the project is completed. If the temperature of the lake water is at 50 degrees Fahrenheit and there is a risk that it may decrease below 50 degrees Fahrenheit, then the herbicide application must be postponed. All water temperature readings must be provided to the Commission of Plymouth on a daily basis. The decision to begin, postpone, or continue the herbicide application will be made by the Bassett Creek Watershed Management Commission in consultation with the MnDNR. There will be no Aquathol application if the water temperature stays over 60 degrees Fahrenheit over four consecutive days.

## **6. GPS DOCUMENTATION**

The Contractor must have Global Positioning System (GPS) technology to record all areas of the lake that are treated and provide the records to the Commission.

## **7. QUESTIONS**

Any questions with regard to these requirements should be directed to Laura Jester, Administrator, Bassett Creek Watershed Management Commission, (952) 270-1990. All questions should be in writing, if time permits. Verbal interpretations shall not be considered binding.

## **8. PAYMENT**

- A. Basis. Payment for Curly-leaf pondweed treatment shall be made based on the total number of acres treated, which shall include all labor, equipment, signage, and application.
- B. The amounts shown in the quote are estimates only. Final payment for the Services shown in the quote will be determined by final amount of acres treated.
- C. Subcontractors. The Contractor shall pay any subcontractors in accordance with Minnesota Statutes, section 471.25, subdivision 4a.

Exhibit 2.

QUOTE FORM

QUOTE FOR THE 2017 CURLY-LEAF PONDWEED TREATMENT PROGRAM ON MEDICINE LAKE

Bassett Creek Watershed Management Commission  
Laura.jester@keystonewaters.com

To: Laura Jester, Bassett Creek Watershed Management Commission

The undersigned, being familiar with your local conditions, having made the field inspection and investigation, I/we deem necessary, having studied the plans and specifications for the work and being familiar with all factors and other conditions affecting the work and cost thereof, hereby propose to furnish all labor, tools, materials, skills, equipment and all else necessary to complete the treatment in accordance with the instructions to quoters and the service agreement. To be considered, such quotes must be received by Wednesday March 29, 2017 by 4:30 p.m.

CURLY-LEAF TREATMENT

TOTAL QUOTE Total cost, inclusive of tax, to treat one (1) surface acre on  
Medicine Lake, assuming up to Forty Five (45) acres\* \$ 430.01  
maximum application, based on an estimated quantity of Per Acre  
chemical applied per acre of 6.7 gals/acre.

\*NOTE: Total actual acres to be treated as determined by early spring aquatic vegetation survey.

FIRM NAME: PLM Lake + Land Management  
ADDRESS: 1511 Maras Ave Shakopee, MN 55379  
PHONE NO.: 651-383-1150-office 218-838-2680-cell  
SIGNED BY: Patrick Selter  
DATE: 3-29-2017

HERBICIDE SUPPLIER

FIRM NAME: Helena Chemical  
ADDRESS: 2905 Lexington Ave Egan, MN 55121  
PHONE NO.: 651-994-7025